

Amendments to the Drawings:

The attached sheet of drawings includes changes to FIG. 4. This sheet replaces the original sheet including FIG. 4.

Attachment: Replacement Sheet

REMARKS

Prior to this amendment, claims 11-12 and 14-17 were pending, of which claims 14-16 were withdrawn from consideration. By this amendment, claims 11-12 and 14-17 are canceled in favor of new claims 28-39. In view of the foregoing amendments and following comments, Applicants respectfully request reconsideration and allowance of all pending claims.

The amendments to the specification presented herein merely describe features readily observable in the Figures as originally filed with the application or that were described in other parts of the specification and claims as originally filed, and therefore do not introduce new matter. The paragraph beginning at page 4, line 20 is amended to state that "The opening 5 of FIG. 4 is shown having three flat side portions 53." Original FIG. 4 as filed with the application clearly shows three flat portions. In addition, the paragraph is amended to state that "The guide edge 62 is oriented along a guide plane that intersects two of the opening flat side portions 53." As shown in FIGS. 4-6 as originally filed, the guide edge 62 is aligned in a vertical plane that intersects two of the flat portions of the opening. Finally, the paragraph was amended to state that the foam sheet is inserted into the cutter "so that an edge surface 41 of the foam 40 is aligned with the guide edge 62." Original FIG. 5 clearly shows this element.

The drawing amendment submitted herewith amends FIG. 4 only to add reference numerals to features already illustrated in the drawings. Specifically, reference numeral 51 for the opening and reference numeral 53 for the flat side portions (three instances) have been added.

The new claims submitted herewith should not be subject to a restriction requirement because they do not satisfy the two-way distinctiveness criteria. More specifically, new claims 28-39, include independent claim 28 directed to a cutting device and independent claim 34 directed to a kit including a cutting device, and therefore are related as sub-combination and combination, respectively. As set forth in MPEP Section 806.05(c), claims directed to a combination and a sub-combination may be restricted only:

[I]f it can be shown that the combination as claimed:

A) does not require the particulars of the sub-combination as claimed for patentability (to show novelty and unobviousness), and

B) the subcombination can be shown to have utility either by itself or in other and different relations. (MPEP 806.05(c))

Both factors must be shown to properly restrict such claims. In the current claims, the combination specified in claim 34 includes each of the elements recited in the sub-combination specified in claim 28. As a result, the claims presented herewith do not satisfy at least the first prong of the distinctiveness criteria noted above. Instead, the present claims are similar to example II presented in MPEP 806.05(c), where the combination claim recites the specific elements of the subcombination (i.e., ABsp/Bsp). For such a situation, the MPEP states that “the inventions are not distinct and a requirement for restriction must not be made, even though the subcombination has separate utility.” (emphasis added) For these reasons, applicants submit that the new claims presented herewith should not be subject to a restriction requirement.

While the cancellation of all previously pending claims renders the rejections articulated in the current Office action moot, the following remarks support the patentability of the new claims over the cited prior art. Independent claims 28 and 34, as well as claims 29-33 and 35-39 dependent thereon, specify a device for cutting at least one pledget from a sheet of hemostatic material having an edge surface. The cutting device includes a base defining a first opening having at least two flat side portions and the first opening is sized to form the pledget. A guide stop is provided by the base and adapted to engage the hemostatic material edge surface, with the guide stop being aligned along a guide plane that intersects the at least two flat side portions. A flap is articulated with respect to the base and includes a first cutting edge sized to correspond to the first opening. It is not seen that the prior art discloses or suggests such a device.

More specifically, the primary reference to Jones discloses a card cutting device having a finger 13 adapted for insertion into an opening 31 of a card 30, thereby to form a notch in the edge of the card 30. It is evident, therefore, that Jones fails to disclose a base defining a first opening sized to form a pledget as specified in each pending claim. Furthermore, Jones fails to disclose or suggest a guide stop adapted to engage an edge surface of a sheet of hemostatic material aligned along a guide plane that intersects two flat side portions of the first opening, as also specified in each pending claim. Consequently, claims 28-40 are patentable over Jones.

The secondary reference to Krol fails to supply the deficiencies noted above with respect to Jones. Krol discloses a percutaneous gastronomy kit that does not include a cutting device. As such, it fails to disclose or suggest at least the first opening or guide stop elements noted above.

CONCLUSION

It is submitted that the present application is in good and proper form for allowance. A favorable action on the part of the Examiner is respectfully solicited.

If, in the opinion of the Examiner a telephone conference would expedite prosecution of the subject application, the Examiner is invited to call the undersigned attorney.

Respectfully submitted,

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